IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

COMPANY PETITION NO. 901 OF 2005

Soni Tourism Private Limited. ...Petitioner.
Vs.
Hotel Sai Siddhi Private Limited. ...Respondent.

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Mr. K.H. Halai with Ms. Priya Aggfarwal i/b. M/s. Halai & Co. for the Petitioner.
Mr. R. D. Soni i/b. Ram & Co. for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.
14th March 2007.

P.C.:

The Company Petition for winding up arises out of an agreement between the Petitioner and the Respondent dated 3rd June 2004. By the agreement, the Respondent agreed to pay to the Petitioner, a sum of Rs. 3.50 crores in respect of the transfer of the shareholdings together with assets and the properties of the Company, namely, Hotel Sai Siddhi Pvt. Ltd., including a hotel at Nasik and the land and a building appurtenant thereto. The Petitioner admits in paragraph 3(a) of the Petition that an amount of Rs.5 lakhs was paid to it while an amount of Rs. 17.50 lakhs was paid towards the outstanding Government dues. The State Bank of India had initiated proceedings against the Petitioner

before the Debts Recovery Tribunal for the recovery of an outstanding loan amount of Rs. 11.49 crores. The proceeding was pending before the Debts Recovery Tribunal at Mumbai when the agreement was arrived at. The agreement between the parties stipulated that the Respondent as a purchaser was to settle the outstandings of the State Bank of India. An amount of Rs. 3.48 crores was to be paid by the Respondent to the Petitioner once the settlement with the State Bank of India, was finalized and possession was obtained by the Respondent from the Bank.

There is no dispute about the factual position that as envisaged in the agreement, the Respondent duly settled the outstandings payable to the State Bank of India, by the Petitioner. The State Bank of India, thereupon released the property from attachment and Consent Terms were filed before the Debts Recovery Tribunal. An amount in excess of Rs.9 crores was paid on behalf of the Respondent to the State Bank of India.

The agreement between the parties inter alia contained a recital to the effect that there was no other debt and liability of the Company save and except as stated in the agreement. The

only liabilities that were disclosed were those of the State Bank of India. Under the agreement the Petitioner as a Vendor held out a representation that in the event that it was found that the Company was indebted to any person whose liabilities are not disclosed, the Vendor shall pay the same and agree to indemnify and keep indemnified the purchaser against such liabilities. Therefore, it is evident that the parties agreed that save and except for liabilities towards the State Bank of India, all other liabilities were to be borne by the Petitioner.

In the affidavit in reply it has been stated that there is a material suppression of the facts in the Company Petition, the suppression being that apart from the liabilities of the State Bank of India, the Petitioner had other liabilities which were required to be settled by the Respondent. These liabilities have been adverted to in para 12 of the affidavit in reply and have been quantified at Rs. 3.13 crores, in addition to which an amount of Rs.17 lakhs was paid to the statutory authorities. A copy of the statement of account is annexed at Exh.2 to the affidavit in support.

The affidavit in reply was filed in these proceedings on

27th September 2006. The allegation contained in para 12 of the affidavit in reply has not been controverted on behalf of the Petitioner by filing an affidavit in rejoinder. In these circumstances, the defence to the effect that the Petitioner is liable to indemnify the Respondent to the extent of the liabilities cleared by the Respondent on behalf of the Petitioner (including the amount of Rs. 3.13 crores adverted to in para 12 of the reply) raises a triable issue. At this stage it cannot be said that the debt is admitted or undisputed. The Petitioner has therefore, to be relegated to the remedy of instituting a suit for the recovery of its dues in which the defence of the Respondent would have to be carefully assessed on the basis of the evidence on record. The Company Petition is accordingly, dismissed.

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